

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

VS.

KENNY DOFNER,

Defendant.

CASE NO. 8:09CR81

MEMORANDUM AND ORDER

This matter is before the Court on the motion filed by the Defendant, Denny Dofner, to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255(f)(3) (“§ 2255 motion”) (Filing No. 331).

On October 29, 2013, this Court denied the Defendant's previous § 2255 motion. (Filing Nos. 317, 318.) When a second § 2255 motion is filed:

A second or successive motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals to contain—

- (1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or
- (2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

28 U.S.C. § 2255.

Therefore, the Defendant must proceed accordingly with the Eighth Circuit Court of Appeals. Without the required certification from the Eighth Circuit, this Court cannot consider the merits of the Defendant's second § 2255 motion and the pending motion will be denied.

IT IS ORDERED:

1. The Defendant's motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255 (f)(3) (Filing No. 331) is denied;
2. A separate Judgment will be issued denying the § 2255 motion; and
3. The Clerk is directed to mail a copy of this Memorandum and Order to the Defendant at his last known address.

DATED this 30th day of June, 2013.

BY THE COURT:

s/Laurie Smith Camp
Chief United States District Judge